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Supreme Court, U.S.
FILED

No. 061460 MAR 21 2007

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In The

Supreme Court of the United States

GENARO GONZALEZ-RAMIREZ, A90-504-667,

Petitioner,

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether a prior conviction for violation of California Penal Code § 261.5 is an aggravated felony, "sexual abuse of a minor," as defined as 8 U.S.C. § 1101(a)(43)(A) for a resident alien.

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OPINION BELOW

The Ninth Circuit Court of Appeals did not select its opinion for publication in the Federal Reporter. A copy of the decision is included in the appendix of this Petition. *See* App. 1.

JURISDICTION

The Ninth Circuit filed its decision on December 21, 2006, and entered an order dismissing petitioner's petition for review, and granting respondent's motion to dismiss for lack of jurisdiction. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari. Judicial review of constitutional and legal claims is available to aliens pursuant to 8 U.S.C. § 1252(a)(2)(D).

STATUTORY PROVISION INVOLVED

8 U.S.C. § 1101(a)(43)(A)

(a) As used in this [Immigration and Nationality] Act – . . . (43) The term "aggravated felony" means – murder, rape, or sexual abuse of a minor.

STATEMENT OF FACTS

Petitioner is a legal permanent resident of the United States, the son of legal permanent residents (his mother may be a derivative U.S. citizen, but proof of her birth to a U.S. citizen is so far unavailable), and is completely

assimilated to life in the United States and the English language having lived here since boyhood. He is married to a U.S. citizen, and works two jobs to support their five children, as well as three from a previous marriage.

Petitioner's conviction at issue in this case is his only conviction. He was charged along with his cousin after a party at a motel. Both had had sex with girls under the age of eighteen.

Both men pled to probation conditioned by minor jail terms. Both men have completed their probation, have been rehabilitated, and have had their convictions deemed by the San Bernardino California Superior Court to be misdemeanors. Both have been allowed to withdraw their pleas, to substitute not guilty pleas to the charge, and have had their charge dismissed. Local San Bernardino County authorities have confirmed in writing to petitioner that, according to California law, he is *not* a sex offender, and that he is *not* required to register as one.

Petitioner's victim has forgiven him, and is willing to support his cause to remain a lawful permanent resident of the United States. However, petitioner's wife resents the victim, and wants petitioner to move his cause without any assistance from the victim.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD RESOLVE THE CONTRADICTION WITHIN THE NINTH CIRCUIT BETWEEN *ALFRIDI* AND *LOPEZ-SOLIS*, AS TO WHETHER VIOLATION OF CALIFORNIA PENAL CODE § 261.5 IS SEXUAL ABUSE OF A MINOR AS DEFINED AT 8 U.S.C. § 1101(a)(43)(A).

The two cases in question, *Alfridi v. Gonzales*, 442 F.3d 1212 (9th Cir. April 4, 2006) and *United States v. Lopez-Solis*, 03-10059 (9th Cir. May 19, 2006), both concern aliens who were judged to have committed "statutory rape." Alfridi's statutory rape was judged to be sexual abuse of a minor, and therefore, became an "aggravated felon" for immigration purposes. Lopez-Solis, however, whose criminal conduct was the same as Alfridi's, was judged *not* to have sexually abused his victim. The Ninth Circuit rationalizes this contradiction in *Lopez-Solis*, *above*, by distinguishing the origin – from the district court -- of his case with Alfridi's whose case came to the Court of Appeals from a federal, administrative agency, the Executive Office of Immigration Review.

The rationale of the Ninth Circuit stated that the Circuit Court had to defer to the agency's interpretation of the phrase, "sexual abuse of a minor." Because the agency has interpreted the phrase broadly, Alfridi was deemed to have sexually abused a minor, because he violated California's statute. In the other case, Lopez-Solis, who violated a Tennessee law similar to California's, had his case reviewed de novo as to whether his conduct was sexual abuse of a minor. The Ninth Circuit decided that it was not, vacated the sentence and remanded for re-sentencing.

Thus, two aliens obtain two different results from the same court. The disparity in these results calls for rectification. Because the Ninth Circuit cannot easily reverse itself, this Court is the only authority that can resolve this unequal result.

II. THIS COURT SHOULD APPLY THE U.S. CONSTITUTION TO FIND THAT THE LAW VIOLATED IN THIS CASE IS NOT A CRIME OF MORAL TURPITUDE.

The violation of California Penal Code § 261.5 is a strict liability offense for which the perpetrator's intent is irrelevant to the question of guilt. Only the age disparity between the sex partners need be proved in court in order to obtain a guilty verdict.

A useful comparison to the crime in question is a conviction for driving with a blood alcohol level above a prescribed amount. For both offenses, only a number (age of victim, blood alcohol level) must be proven as an element to obtain a conviction. Mental state is irrelevant, and no criminal intent need be proven.

8 U.S.C. § 1101(a)(43)(A) includes conviction for murder and rape. Thus, petitioner has found himself to be convicted literally for "child rape." This is patently false, as petitioner has proven, and as California authorities agree. However, petitioner is so far unable to obtain relief from this accusation from the federal courts. That is why he comes here today.

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CONCLUSION

The Court should grant the petition for writ of certiorari and reverse the decision of the Ninth Circuit.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GENARO GONZALEZ-RAMIREZ, Petitioner, v. ALBERTO R. GONZALES, Attorney General, Respondent.	No. 06-72300 Agency No. A90-504-667 ORDER (Filed Dec. 21, 2006)

Before: GOODWIN, McKEOWN and FISHER, Circuit Judges.

We have reviewed the opposition to the motion to dismiss this petition for lack of jurisdiction, and we conclude that petitioner has failed to raise a colorable constitutional or legal claim to invoke our jurisdiction over this petition for review. Accordingly, respondent's motion to dismiss this petition for review for lack of jurisdiction is granted. *See* 8 U.S.C. § 1252(a)(2)(C), (D); *Afridi v. Gonzalez*, 442 F.3d 1212, 1215 (9th Cir. 2006).

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

DISMISSED.